

Nos. 11485-11486

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

No. 11485

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Asso-
ciation,

Appellant,

vs.

GEORGE GARDNER, Trustee in Bankruptcy of the
Estate of HERBERT G. RELL, Bankrupt,

Appellee.

and

No. 11486

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Asso-
ciation,

Appellant,

vs.

GEORGE GARDNER, Trustee in Bankruptcy of the
Estate of LOVINA RELL, Bankrupt,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division.

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Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division.

INDEX TO DISTRICT COURT CASE NO. 44287-WM
(Circuit Court No. 11485)

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

HENRY MERTON

1204 Loew's State Building

Los Angeles 14, Calif.

For Appellee:

FRANK M. CHICHESTER

617 South Olive Street

Los Angeles 14, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

DEBTOR'S PETITION

Form No. 1

In the District Court of the United States for the
Southern District of California
Central Division

In Bankruptcy No. 44287-WM

In the Matter of

HERBERT G. RELL,

Bankrupt

To the Honorable Judge of
the District Court of the United States for the
Southern District of California:

The Petition of Herbert G. Rell, residing at No. 5280
West Adams Blvd., in the City of Los Angeles, County
of Los Angeles, State of California, by occupation a
garage owner, and employed by.....
(or engaged in the business of.....),
respectfully represents:

1. Your petitioner has had his principal place of business (or has resided, or has had his domicile) at Los Angeles, California, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.
2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.
3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible

to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

HERBERT G. RELL

Petitioner

EARL A. EVERETT

Attorney for Petitioner

State of California

County of Los Angeles—ss.

I, Herbert G. Rell, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

HERBERT G. RELL

Petitioner

Subscribed and sworn to before me this 28th day of February, 1946.

EARL A. EVERETT

Notary Public in and for Los Angeles County,
California.

(Official character.)

[Endorsed]: Filed Mar. 6, 1946. [2]

United States District Court
Southern District of California

No. 44,287-WM

ORDERS OF ADJUDICATION AND OF
GENERAL REFERENCE

At Los Angeles, in said District, on March 6, 1946.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number 44,287-WM Title of Proceedings Herbert G. Rell. Filed 3-6-46 Referee Hugh L. Dickson, Esq., Los Angeles, Calif.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Mar. 6, 1946. [3]

DEBTOR'S PETITION

Form No. 1

In the District Court of the United States for the
Southern District of California
Central Division

In Bankruptcy No. 44288-WM

In the Matter of

LOVINA RELL,

Bankrupt

To the HonorableJudge of
the District Court of the United States for the
Southern District of California:

The Petition of Lovina Rell, residing at No. 5280 West Adams Blvd., in the City of Los Angeles, County of Los Angeles, State of California, by occupation a cosmetologist, and employed by Dolly's Beauty Salon, Mansfield and Wilshire Blvd., Los Angeles (or engaged in the business of), respectfully represents:

1. Your petitioner has had his principal place of business (or has resided, or has had his domicile) at Los Angeles, California, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his

creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

LOVINA RELL
Petitioner

EARL A. EVERETT
Attorney for Petitioner

State of California
County of Los Angeles—ss.

I, Lovina Rell, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

LOVINA RELL
Petitioner

Subscribed and sworn to before me this 28th day of February, 1946.

EARL A. EVERETT
Notary Public in and for Los Angeles County,
California.

(Official character.)

[Endorsed]: Filed Mar. 6, 1946. [2]

United States District Court
Southern District of California

No. 44,288-WM

ORDERS OF ADJUDICATION AND OF
GENERAL REFERENCE

At Los Angeles, in said District, on March 6, 1946.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number 44,288-WM Title of Proceedings Lovina
Rell Filed 3-6-46 Referee Hugh L. Dickson, Esq.,
Los Angeles, Calif.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Mar. 6, 1946. [3]

In the District Court of the United States for the
Southern District of California
Central Division

No. 44287-WM No. 44288-WM

In the Matter of

HERBERT G. RELL,

Bankrupt.

In the Matter of

LOVINA RELL,

Bankrupt.

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable William C. Mathes, Judge of the Dis-
trict Court of the United States.

I, Hugh L. Dickson, one of the Referees of the above Court do hereby certify that in the course of the proceedings in the above entitled matters, before me, upon hearing of the Trustee's Petition to set aside and declare void a certain Chattel Mortgage in which the Citizens National Trust and Savings Bank of Los Angeles was the Chattel Mortgagee, the following questions were presented:

- (a) Did the failure on the part of the Mortgagor or the Mortgagee named in said Chattel Mortgage, to publish a Notice of Intention to Chattel Mortgage the fixtures and equipment of a garage owner before the consummation of such mortgage, as required by Section [4] 3440 of the Civil Code of the State of California, render the said Chattel Mortgage void as against the Trustee in Bankruptcy?

- (b) Did the failure to record the said Chattel Mortgage in the Office of the County Recorder of Los Angeles County, State of California for a period of twenty (20) days following its execution by the parties thereto render the said Chattel Mortgage void as against the Trustee in Bankruptcy?
- (c) Was the failure to cause the Mortgagee named in the said Chattel Mortgage to be registered as the legal owner of the motor vehicles described therein for a period of two months (2) and sixteen days (16), following the execution of the said Chattel Mortgage, such a delay in registration as to render the said Chattel Mortgage void as against the Trustee in Bankruptcy?

A stipulation of facts setting forth the details of the execution and the recording of the Chattel Mortgage was filed on April 30, 1946 and a Modification to the Stipulation of Facts was filed on May 7, 1946. Thereafter memoranda of Points and Authorities were presented and on May 14, 1946, I made and filed written Findings of Fact and Conclusions of Law, hereunto annexed and on May 14, 1946, I made and entered, pursuant thereto, the following Order: (Omitting caption and preamble),

“It Is Hereby Ordered, Adjudged and Decreed:

I.

That the Chattel Mortgage covering the following described personal property executed by the above named Bankrupts in favor of the Citizens National Trust and Savings Bank of Los Angeles, is void as against George Gardner, Trustee in Bankruptcy, to-wit: (Describing all

of the personal property set forth in the Chattel Mortgage) [5]

II.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, is the owner of, and entitled to the possession of all those items of personal property more particularly described in the foregoing paragraph I, free and clear of any right, title, interest, estate, claim or lien on the part of the Citizens National Trust and Savings Bank of Los Angeles.

III.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, has a right to have and apply the value of the said personal property free and clear of the purported lien of said chattel mortgage to the payment of the obligation of the bankrupt estates and for and on behalf of all the creditors of said bankrupt estates.

Done in Open Court This 14 Day of May, 1946.

HUGH L. DICKSON

Referee in Bankruptcy."

And that thereafter and on May 20, 1946 and within the time provided by law, the creditors, Citizens National Trust and Savings Bank, a National Banking Association, served and filed its Petition for a Review of said Order by the Judge.

Attached to this certificate are the following documents:

- (a) Trustee's Petition for Order to Show Cause Re Chattel Mortgage of Citizens National Trust and *Saving* Bank of Los Angeles.
- (b) Stipulation of Facts in Re Order to Show Cause.

- (c) Modification to Stipulation of Facts in Re Order to Show Cause.
- (d) Findings of Fact and Conclusions of Law.
- (e) Respondent's Proposed Amendments to Findings of Fact and Conclusions of Law. (Allowed on May 14, 1946.)
- (f) Order (Pursuant to Findings of Fact and Conclusions [6] of Law).
- (g) Petition for Review.

Dated: June 25, 1946.

HUGH L. DICKSON

Referee in Bankruptcy. [7]

DOCUMENT NO. 1

PETITION FOR ORDER TO SHOW CAUSE RE
CHATTEL MORTGAGE OF CITIZENS NA-
TIONAL TRUST AND SAVINGS BANK OF
LOS ANGELES

Your Petitioner, George Gardner, respectfully represents that he is the duly appointed, qualified and acting Trustee in Bankruptcy in the above entitled matters.

I.

That heretofore, and on or about April 2, 1946, *be* conducted an oral examination of the above named Bankrupts and examined their schedules of assets and liabilities upon file herein.

II.

That among the creditors holding securities as set forth in the said schedules is the respondent, the Citizens Na-

tional Trust and Savings Bank of Los Angeles; that the security held by the said creditor appears to be a Chattel Mortgage on all of the equipment of the Bankrupts located at 5278 West Adams Boulevard, Los Angeles, California, consisting of one 1936 Plymouth Sedan, one 1935 Ford Pickup Truck, one 1936 Willys Pickup Truck, one air compressor tank and miscellaneous tools and equipment ordinarily used by a garage owner or machinist; that the alleged value of the securities covered by the Chattel Mortgage is the sum of \$5000.00 and the alleged amount due or claimed by the said creditor is the sum of \$2810.00.

III.

That your Petitioner is informed and believes and therefore alleges that the said Chattel Mortgage referred to herein was executed by the Bankrupts on May 4, 1945; that thereafter and on May 5, 1945 the respondent filed for record in the Office of the County Recorder of Los Angeles County, State of California a Notice of Intention to Chattel Mortgage. [8]

IV.

The said respondent stated therein that notice is given, pursuant to Section 3440 of the Civil Code of the State of California that on May 4, 1945 the above named Bankrupts, the owners of certain personal property described as fixtures of a garage located at 5278 West Adams Boulevard, Los Angeles, California intend to place a Chattel Mortgage upon said fixtures and that said Chattel Mortgage is to be executed and the consideration therefor will be paid on or about May 11th, 1945 at 740 South Hill Street, Los Angeles, California.

V.

That thereafter and on or about May 24, 1945 the said Chattel Mortgage was filed for record in the Office of the County Recorder of Los Angeles County State of California.

VI.

That Your Petitioner is informed and believes and therefore alleges that no copy of any notice of intention to Chattel Mortgage the personal property referred to herein was ever published in a newspaper of general circulation within the township in which the said Chattel Mortgage was made.

VII.

That your Petitioner is informed and believes and therefore alleges that prior to the execution of the said Chattel Mortgage the above named Bankrupts were indebted to various unsecured creditors as more particularly appears from Schedule A-3 of the Bankrupts on file herein.

VIII.

That by virtue of the failure on the part of the respondent, the Citizens National Trust and Savings Bank of Los Angeles, to comply with the provisions of Section 3440 of the Civil Code of the State of California and by virtue of the failure of the said respondent to file for record a copy of said [9] Chattel Mortgage within a reasonable time following its execution, the said Chattel Mortgage is void and of no effect as against your Petitioner.

Wherefore, Your Petitioner prays for the issuance of an Order requiring the respondent, the Citizens National Trust and Savings Bank of Los Angeles, to show cause,

if any it has, why an Order should not be made herein declaring the said Chattel Mortgage referred to above to be void and of no effect as against your Petitioner, the Trustee in Bankruptcy herein, and for such other relief as to the Court may seem just.

GEORGE GARDNER

Trustee.

FRANK M. CHICHESTER

Attorney for Trustee.

[Verified.] [10]

DOCUMENT NO. 2

STIPULATION OF FACTS IN RE ORDER TO SHOW CAUSE

In connection with the Order to Show Cause issued in these proceedings April 15, 1946 directed to Citizens National Trust & Savings Bank of Los Angeles, Trustee George Gardner and Respondent Citizens National Trust & Savings Bank of Los Angeles, through their respective counsel, stipulate to the following facts:

1. That Respondent Bank holds a chattel mortgage on the property and equipment of the bankrupt located at 5278-80 West Adams Boulevard, Los Angeles, California, consisting of one 1936 Plymouth Sedan, one 1935 Ford pick-up truck, one 1936 Willys pick-up truck, one air compressor tank, and miscellaneous tools and equipment ordinarily used by a garage owner or machinists, more particularly described in said chattel mortgage. That the approximate value of the property so covered by said chattel mortgage is the sum of \$5,000.00, and the amount

due and unpaid on said chattel mortgage is the sum of \$2,812.15.

2. That said chattel mortgage was executed May 4, 1945, by the bankrupts, Herbert G. Rell and Lovina Rell, and deposited in an escrow at Citizens National Trust & Savings Bank at its office at 740 South Hill Street, Los Angeles, California, on said date, said escrow being identified as Escrow No. 2-26235. That said chattel mortgage was so deposited in said escrow pursuant to written escrow instructions made on and under date of May 4, 1945, by and between said bankrupts, Herbert G. Rell and Lovina Rell, one Andrew H. Wilson, and respondent Citizens National Trust & Savings Bank of Los Angeles.

3. The transaction involved in the said escrow and as evidenced by instructions of the parties thereto consisted as [11] follows: A sale by Andrew H. Wilson of a garage business located at 5278-80 West Adams Boulevard, Los Angeles, California, together with the automobiles and equipment incorporated and described in respondent bank's chattel mortgage.

That as part of said transaction and as so evidenced by the joint escrow instructions of the parties, Respondent Bank was to and did advance to said bankrupts, Herbert G. Rell and Lovina Rell, in said escrow the sum of \$3,150.00 to enable them to pay to the said Andrew H. Wilson, the vendor of said business, his full purchase price called for by said vendor in said escrow for the sale of said business, automobiles and equipment.

That there was deposited in said escrow a Bill of Sale by the vendor, Andrew H. Wilson, covering said property, equipment and automobiles. That the usual notice of intended sale by the vendor, Andrew H. Wilson, was

recorded and published. That the instructions of the parties directed, at the close of the escrow, the delivery of a Bill of Sale to the vendees, Herbert G. Rell and Lovina Rell, bankrupts herein, the delivery to Respondent Bank of the aforesaid chattel mortgage, and the payment from the funds deposited in said escrow of certain bills against the business incurred by the vendor, Andrew H. Wilson, and the balance thereof to said Wilson on account of his purchase price.

4. That said escrow was, in fact, closed May 19, 1945 and on said day the escrow depository disbursed the funds on deposit in said escrow according to the instructions of the parties, and concurrently delivered the Bill of Sale covering the said automobiles and equipment to the purchasers, the said bankrupts, Herbert G. Rell and Lovina Rell, and delivered the aforementioned chattel mortgage to respondent bank.

5. Payment of the consideration to the vendor and delivery of the Bill of Sale to the vendee and the chattel mortgage to respondent bank were not to be made until all of [12] the terms and conditions of the escrow had been complied with. On May 19, 1945, the terms and conditions of said escrow had been complied with and delivery of the funds and instruments were accordingly made on that date.

6. That in addition to the funds paid through the escrow referred to above, the said bankrupts, paid outside of the escrow to Andrew H. Wilson the sum of \$1,000.00 and executed and delivered to the said Wilson a promissory note for \$1,000.00 secured by a chattel mortgage junior to the chattle mortgage of the respondent herein.

7. That a notice of intention to chattel mortgage the equipment hereinbefore referred to was recorded on May 5, 1945, by respondent bank, reciting that the consideration therefor would be paid on or about the 11th day of of May, 1945, at 740 South Hill Street, Los Angeles, California.

No notice of intention to chattel mortgage said property was published in a newspaper of general circulation within the township in which said chattel mortgage was made.

That the escrow instructions executed May 4, 1945, provided that the respondent bank would publish a notice of intention to mortgage. That on May 17, 1945, an approval as to form of the instruments filed in said escrow was executed by the respondent bank, the bankrupts, Herbert G. Rell and Lovina Rell, and Andrew H. Wilson, which included among other things "We are satisfied with the publication of intent to mortgage made in connection with this transaction by said Citizens National Trust & Savings Bank of Los Angeles."

It Is Further Stipulated By and Between Said Parties as Follows:

A. That the petition for the aforementioned Order to Show Cause made by said trustee and filed on April 15, 1946, be deemed to be amended to include an allegation to the effect that [13] no certified copy of the chattel mortgage was promptly deposited with the Department of Motor Vehicles of the State of California at Sacramento, California, following its execution.

B. That in this connection and as an answer thereto by said respondent, it is stipulated that G. E. Weber, if

appearing as a witness for and on behalf of respondent, would testify under oath substantially to the following:

That he is the assistant manager of the Instalment Loan Department of respondent bank; that he had direct supervision of the loan secured by the chattel mortgage here in question for and on behalf of respondent bank.

That the chattel mortgage was executed and deposited in the escrow hereinabove referred to on May 4, 1945. That said chattel mortgage was not released from said escrow and delivered to respondent bank, in its capacity as the mortgagee, until the close of said escrow, to wit, on May 19, 1945.

That Andrew H. Wilson did not deliver the ownership certificates to the respondent bank, stating to Mr. G. E. Weber that they were at that time located at the Department of Motor Vehicles in Sacramento, California, in the process of being transferred to the said Wilson. That on May 4, 1945, Mr. Herbert G. Rell also stated to said G. E. Weber that they were in the Department of Motor Vehicles in Sacramento, and that as soon as they were returned to Wilson, Rell would assume the responsibility of seeing that they were delivered to the said G. E. Weber or the respondent bank, whereupon the said Weber requested Herbert G. Rell and Lovina Rell to sign and they did so sign a form of trust receipt setting forth in effect that they acknowledged holding in trust for the said bank, as a trustor, documents or instruments [14] covering the aforementioned automobiles and undertook in said written trust receipt that upon receipt of the ownership certificates on said automobiles

from the Department of Motor Vehicles, they would deliver them in the proper form to the respondent bank. That said Weber, if appearing as a witness and testifying to the foregoing, would then produce to the Court the original written instrument, entitled Trust Receipt, to which he referred, and the same would be found to be in substance and in effect as to its contents as he would have so testified.

That on or about the 3rd or 4th of June, 1945, the ownership certificates and registration cards on said automobiles were delivered to respondent bank showing the ownership of said automobiles in the said Andrew H. Wilson, and on June 8, 1945, respondent bank sent a certified copy of said chattel mortgage, with the ownership certificates, endorsed, by said Wilson, Rell and the Bank, and registration cards and fee to the Department of Motor Vehicles in Sacramento for recordation. Thereafter, on June 29, 1945, respondent received a letter from the Department of Motor Vehicles, stating in effect that there was a technical defect, the exact nature of which the said witness could not remember, but it was either insufficient fee transmitted with said documents or incorrect endorsement of a name.

That the said witness, if asked the question if the chattel mortgage and ownership certificates were returned with the letter referred to, his answer would be that he does not remember; that his department at that time was handling hundres of automobile loans secured by chattel mortgages, it being a central office for that [15] kind of loan for some thirty-four branches of Respondent Bank. That there does

not appear in his records anything to disclose one way or the other if the mortgage and/or ownership certificates were returned with the aforementioned letter from the Department of Motor Vehicles. Whatever the defect was, respondent bank corrected it and returned the forwarding letter with appropriate notations on the reverse side to the Department of Motor Vehicles. That the ownership certificates were later returned to respondent bank bearing issuance date of July 20, 1945.

It Is Further Stipulated by and between the parties, through their respective counsel, that there is on file in these proceedings schedules of the trustee listing claims of certain creditors which purport to have existed prior to the giving of the chattle mortgage herein.

Dated: April 30, 1946.

FRANK M. CHICHESTER

Attorney for George Gardner, Trustee

HENRY MERTON

Attorney for Citizens National Trust &
Savings Bank of Los Angeles [16]

DOCUMENT NO. 3

MODIFICATION TO STIPULATION OF FACTS IN RE ORDER TO SHOW CAUSE

The Trustee and Respondent Citizens National Trust & Savings Bank of Los Angeles, having discovered since the making and filing of their written Stipulation of Facts dated April 30, 1946, that the same is in error in certain particulars, hereby stipulate, through their respective coun-

sel, that said written Stipulation of Facts be modified in order to cure said error as follows:

A. That the automobile described as one Ford Pick-Up Truck, 1935 model, was the only automobile sold to the bankrupts by the said Andrew H. Wilson and was so sold to the bankrupts through the escrow, together with the equipment of the garage business referred to.

B. That it is true that all three ownership certificates covering the three automobiles, respectively, were, prior to delivery thereof to the Respondent Bank, at the Department of Motor Vehicles at Sacramento, in the process of transfer of ownership to said bankrupts at the times stated in the said stipulation of facts, but that legal and registered ownership of the automobile described as one Willys pick-up truck, 1936 model was being transferred to the bankrupts from a vendor other than said Andrew H. Wilson, the name of whom the bankrupts cannot remember, and the legal ownership of the automobile described as one 1936 Plymouth Sedan was being transferred by the Bank of America to said bankrupts pursuant to the discharge of a chattel mortgage on said automobile previously held by said Bank of America. The registration of said automobile last mentioned was at all times herein involved in the name of said bankrupts. Possession of [17] said automobile and the Willys pick-up truck was in said bankrupts prior to and subsequent to the closing of the escrow between Wilson, respondent, and the bankrupts. The automobile purchased by the bankrupts from Wilson; namely, the Ford pick-up truck, 1935 model, was not in the possession of said bankrupts until after the close of the escrow referred to.

It Is Further Stipulated that except as modified above, the said written Stipulation of Facts dated April 30, 1946, remains as is.

Dated: May 7, 1946.

FRANK M. CHICHESTER

Attorney for George Gardner, Trustee

HENRY MERTON

Attorney for Citizens National Trust &
Savings Bank of Los Angeles, Re-
spondent [18]

DOCUMENT NO. 4

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The "Petition for Order to Show Cause Re Chattel Mortgage of Citizens National Trust and Savings Bank of Los Angeles" of George Gardner, as Trustee in Bankruptcy of the above named bankrupt estates, together with the "Order to Show Cause" issued thereon dated April 15, 1946, came on regularly to be heard on April 23, 1946 before the Honorable Hugh L. Dickson, Referee in Bankruptcy, presiding in the above entitled matters;

George Gardner, as Trustee, appeared in person and by his counsel, Frank M. Chichester; the respondent, Citizens National Trust and Savings Bank of Los Angeles, appeared by its counsel, Henry Merton.

Pursuant to the oral agreement of counsel, the petition of the Trustee was taken under submission pending the filing herein of a "Stipulation of Facts." Said "Stipulation of Facts" was duly filed on April 30, 1946 and a

"Modification to Stipulation of Facts in re Order to Show Cause" was filed on May 7, 1946.

Thereafter counsel duly served and filed their "Points and Authorities" relative to the issues presented, and the Court being advised in the premises, the Court now makes and files this, its Findings of Fact and Conclusions of Law constituting the decision of this Court:

FINDINGS OF FACT:

I.

That it is true that at all times herein George Gardner was and now is the duly qualified and acting Trustee for the above entitled bankrupt estates. [19]

That it is true that among the assets of the above entitled estates, there came into possession of the Trustee, George Gardner, those certain items of personal property, described in Exhibit "A" attached hereto and by reference made a part hereof, ordinarily used by a garage owner or machinist, together with three motor vehicles described as one 1936 Plymouth Sedan, Motor No. P2-370259, Serial No. 1161805, one 1935 Ford Pickup Truck, Motor No. DR89610, Serial No. 18-2159920, and one 1936 Willys Pickup Truck, Motor No. 77-45263, Serial No. 77-46946, all situated at 5278 West Adams Boulevard, Los Angeles, California.

III.

That it is true that on or about May 4, 1945 the above named bankrupts executed their promissory note and chattel mortgage in favor of the respondent, Citizens National Trust and Savings Bank of Los Angeles, as security for their indebtedness to said bank in the sum of

It Is Further Stipulated that except as modified above, the said written Stipulation of Facts dated April 30, 1946, remains as is.

Dated: May 7, 1946.

FRANK M. CHICHESTER

Attorney for George Gardner, Trustee

HENRY MERTON

Attorney for Citizens National Trust &
Savings Bank of Los Angeles, Re-
spondent [18]

DOCUMENT NO. 4

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The "Petition for Order to Show Cause Re Chattel Mortgage of Citizens National Trust and Savings Bank of Los Angeles" of George Gardner, as Trustee in Bankruptcy of the above named bankrupt estates, together with the "Order to Show Cause" issued thereon dated April 15, 1946, came on regularly to be heard on April 23, 1946 before the Honorable Hugh L. Dickson, Referee in Bankruptcy, presiding in the above entitled matters;

George Gardner, as Trustee, appeared in person and by his counsel, Frank M. Chichester; the respondent, Citizens National Trust and Savings Bank of Los Angeles, appeared by its counsel, Henry Merton.

Pursuant to the oral agreement of counsel, the petition of the Trustee was taken under submission pending the filing herein of a "Stipulation of Facts." Said "Stipulation of Facts" was duly filed on April 30, 1946 and a

"Modification to Stipulation of Facts in re Order to Show Cause" was filed on May 7, 1946.

Thereafter counsel duly served and filed their "Points and Authorities" relative to the issues presented, and the Court being advised in the premises, the Court now makes and files this, its Findings of Fact and Conclusions of Law constituting the decision of this Court:

FINDINGS OF FACT:

I.

That it is true that at all times herein George Gardner was and now is the duly qualified and acting Trustee for the above entitled bankrupt estates. [19]

That it is true that among the assets of the above entitled estates, there came into possession of the Trustee, George Gardner, those certain items of personal property, described in Exhibit "A" attached hereto and by reference made a part hereof, ordinarily used by a garage owner or machinist, together with three motor vehicles described as one 1936 Plymouth Sedan, Motor No. P2-370259, Serial No. 1161805, one 1935 Ford Pickup Truck, Motor No. DR89610, Serial No. 18-2159920, and one 1936 Willys Pickup Truck, Motor No. 77-45263, Serial No. 77-46946, all situated at 5278 West Adams Boulevard, Los Angeles, California.

III.

That it is true that on or about May 4, 1945 the above named bankrupts executed their promissory note and chattel mortgage in favor of the respondent, Citizens National Trust and Savings Bank of Los Angeles, as security for their indebtedness to said bank in the sum of

Three Thousand One Hundred Fifty Dollars, (\$3150.00); that it is true that the property described in said chattel mortgage, as more particularly set forth in Exhibit "A" is the property that came into the possession of the Trustee, George Gardner, upon the filing of the petitions in bankruptcy herein as set forth in paragraph II above.

IV.

That it is true that said chattel mortgage was not filed for record in the office of the County Recorder of Los Angeles County until May 24, 1945.

V.

That it is true that no "Notice of Intention to Chattel Mortgage" was ever published in a newspaper of general circulation within the Township in which the said chattel mortgage was made.

VI.

That it is true that said chattel mortgage was given as [20] partial payment only for the property described therein, excluding therefrom the 1936 Plymouth Sedan and the 1936 Willys Pickup Truck; that it is true that said bankrupts paid the sum of Five Thousand Dollars (\$5000.00) to the seller of said property; that it is not true that said chattel mortgage was a purchase-money mortgage.

VII.

That it is true that on May 4, 1945 the bankrupts were indebted to various creditors other than the respondent, Citizens National Trust and Savings Bank of Los Angeles.

VIII.

That it is true that on or about June 8, 1945 the respondent placed a certified copy of the said chattel mortgage together with the certificates of ownership for the said motor vehicles together with certain fees in the United States mail addressed to the Motor Vehicle Department, Sacramento, California; that on or about June 29, 1945 the respondent was notified that either insufficient fees had been deposited with the Motor Vehicle Department or that the said certificates of ownership were not properly endorsed all as provided by the Vehicle Code of the State of California.

IX.

That it is true that on July 20, 1945 the respondent, Citizens National Trust and Savings Bank of Los Angeles was registered as the legal mortgagee of the said motor vehicles in the Motor Vehicle Department, Sacramento, California.

X.

That it is true that the respondent, Citizens National Trust and Savings Bank, failed to act promptly or diligently in causing the said chattel mortgage to be recorded in the office of the County Recorder of Los Angeles County or in depositing a certified copy of said chattel mortgage with the Motor Vehicle [21] Department, Sacramento, California.

AS CONCLUSIONS OF LAW FROM THE
FOREGOING FINDINGS OF FACT:

I.

That the hypothecation of the personal property referred to in the foregoing Findings of Fact from the bankrupts to the Citizens National Trust and Savings Bank of Los Angeles is void as against George Gardner, Trustee in Bankruptcy.

II.

That the respondent, the Citizens National Trust and Savings Bank of Los Angeles, failed to comply with the provisions of Section 3440 of the Civil Code of the State of California.

III.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, is the owner of, and entitled to the possession of all those items of personal property more particularly described in the said chattel mortgage, a copy of which is on file herein, free and clear of any right, title, interest, estate, claim or lien on the part of the Citizens National Trust and Savings Bank of Los Angeles.

IV.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, has the exclusive right to have and apply the value of all of the said personal property free and clear of the lien of said chattel mortgage to the payment of the obligations of the bankrupt estates and for and on behalf of all the creditors of said bankrupt estates.

Let Judgment Be Entered Accordingly.

HUGH L. DICKSON

Referee in Bankruptcy. [22]

EXHIBIT "A"

- 1 – Air Compressor-Tank #5847, Motor #G.E. KP7056
With Kelley Compressor #95324
- 1 – Lincoln Water Pump grease gun Model 155
- 1 – Lincoln Universal grease gun Model 158
- 1 – Wall type spark plug cleaner
- 20 – Expansion Reamers
 - 1 – Engine Analyzer
 - 1 – Paint Machine and Mixer
Tow Chains
 - 1 – Tubula Flaring Machine, with Ridge Reamer and
Ford Valve lifter (Bar Type)
Air Hoses and Attachments
Water Hoses and Attachments
 - 1 – Wheel Puller and pinon puller
 - 1 – Tire Tube Piston Tank
 - 1 – Auto Parts Boiling on rollers
 - 1 – Auto Parts Cleaning Tank
 - 1 – Black & Decker Super Service Valve Shop Type K.W.
#336210, with Vibro Centric Valve Seat Grinder
Type B #A355607 and Stone Pressing Stand Type
A #368482
 - 1 – Manely Auto Tow Crane and Spout Lite #150-55578
 - 1 – Westinghouse Battery Charger #954966B
 - 1 – Booster Battery
 - 1 – Manely Front End Machine and Attachments
 - 1 – Grinder-Baldor Electric Buffer and Grinder, Type
X20, #021111
 - 1 – Large metal bench.
 - 1 – Small “ “
 - 1 – Metal Cabinet Type Bench

- 1 – Chiskolm Moore Chain Hoist 1 ton
High Boys (oil)
Oil Can Drums
- 1 – Complete Welding Outfit
- 1 – Pair Goggles
- 1 – Walker Floor Hdy Jack
Paint Spray Guns #6 Serial, #0681 Devilbliss –
Shelbord and Attachments, Hose, Air Regulations
cup
- 30 – Brake Reliner Wyman Marathon Electric Motor
#023828
- 1 – Desk
- 1 – File Cabinets
- 1 – Chair
- 1 – Bench Type Vise
Billing Machines and Forms
- 3 – Sets Automobile Stands
- 1 – Brake Fluid Machine
- 1 – Battery Box and Filler
- 1 – Automobile tow dolly [23]

DOCUMENT NO. 5

RESPONDENT'S PROPOSED AMENDMENTS TO
FINDINGS OF FACT AND CONCLUSIONS OF
LAW

Respondent, Citizens National Trust & Savings Bank of Los Angeles, respectfully requests that the proposed findings of fact submitted to the Honorable Hugh L. Dickson, Referee, be amended in the following particulars:

Paragraphs III and IV thereof as follows:

That it is true that on or about May 4, 1945, the above named bankrupts executed a chattel mortgage in favor of the respondent, Citizens National Trust & Savings Bank of Los Angeles, as security for a note bearing said date in the sum of Thirty-One Hundred Fifty (\$3150.00) Dollars, and that it is true that the property described in said chattel mortgage, more particularly described in Exhibit "A". is the property that came into the possession of the Trustee, George Gardner, upon the filing of the petitions of bankruptcy herein, as set forth in Paragraph II above. That it is true that said chattel mortgage was deposited in an escrow on said May 4, 1945, pursuant to written escrow instructions made under said date by and between said bankrupts, Andrew H. Wilson, and respondent bank. That it is true that the transaction involved in said escrow and as evidenced by the instructions of the parties was one wherein Andrew H. Wilson was selling a garage business located at 5278-80 West Adams Boulevard *Boulevard*, Los Angeles, California, together with one of the automobiles heretofore referred to; namely, one Ford Pick-Up Truck, 1935 model, and equipment incorporated and described in said respondent bank's chattel mortgage; that it is true that respondent bank deposited in said escrow the sum of \$3150.00 to enable the bankrupt to pay the vendor Andrew H. Wilson part of his full purchase price called for by him in said escrow for the sale of [24] said business, automobile and equipment. That it is true that said chattel mortgage was delivered to respondent bank at close of escrow, to wit, on May 19, 1945. That it is true that after the receipt of said chattel mortgage by respondent bank from

the escrow, after the close thereof, as aforesaid, it filed said chattel mortgage for record in the Office of the County Recorder of Los Angeles County on May 24, 1945.

That it is true that all three ownership certificates covering all three automobiles, respectively, were at the time of the closing of said escrow on May 19, 1945, not available for delivery to respondent bank, in that said ownership certificates were in the Division of Motor Vehicles in Sacramento in the process of transfer of ownership in the following particulars: The ownership of the 1935 Ford Pick-Up Truck sold by Andrew H. Wilson to said bankrupts was being transferred from another party to said vendor Andrew H. Wilson. The ownership of the Willys Pic-Up Truck, 1936 model, was being transferred to the bankrupts from a vendor other than the aforesaid Andrew H. Wilson. The ownership of the 1936 Plymouth Sedan was being transferred to the bankrupts by the Bank of America pursuant to discharge of a chattel mortgage on said automobile previously held by said Bank of America. That said ownership certificates and registration cards on said automobiles were later delivered to respondent bank on or about the 3rd or 4th day of June, 1945.

That it is true that the automobile purchased by the bankrupts from said Wilson; namely, the 1935 Ford Pick-Up Truck, was not in the possession of said bankrupts until after the close of the escrow referred to. That it is true that the automobiles described as 1936 Plymouth Sedan and the 1936 Willys Pick-Up Truck were not involved in the sale of the business and equipment by Andrew H. Wilson to the bankrupts, handled through

escrow, as aforesaid, but had been independently acquired by said bankrupts. [25]

That Paragraph 6 of the Trustee's Proposed Findings of Fact be modified to the extent that there be eliminated therefrom the following "That it is not true that said chattel mortgage was a purchase money mortgage" as it is submitted that this is a Conclusion of Law rather than a Finding of Fact.

That Paragraph 10 of the Trustee's Proposed Findings of *Fac* be eliminated, as it is submitted that this is a Conclusion of Law, rather than a Finding of Fact.

Dated: May 13, 1946.

Respectfully submitted,

HENRY MERTON

Attorney for Respondent Citizens National Truste &
Savings Bank of Los Angeles [26]

DOCUMENT NO. 6

ORDER (PURSUANT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW)

The Petition for Order to Show Cause quieting title in the Trustee of George Gardner, as Trustee in Bankruptcy of the above named Bankrupt estates, together with the Order to Show Cause issued thereon, dated April 15, 1946, came on regularly to be heard on April 23, 1946 before the Honorable Hugh L. Dickson, Referee in Bankruptcy, presiding in the above entitled matters;

George Gardner, as Trustee, appearing in person and by his counsel, Frank M. Chichester; the respondent, Citizens National Trust and Savings Bank of Los Angeles, appeared by its counsel, Henry Merton.

Pursuant to the oral agreement of counsel, the petition of the Trustee was taken under submission pending the filing herein of a "Stipulation of Facts." Said "Stipulation of Facts" was duly filed on April 30, 1946 and a "Modification to Stipulation of Facts in re Order to Show Cause" was filed on May 7, 1946.

The Court having made and filed its Findings of Fact and Conclusions of Law constituting the decision of this Court in accordance therewith;

It Is Hereby Ordered, Adjudged and Declared:

I.

That the chattel mortgage covering the following described personal property executed by the above named bankrupts in favor of the Citizens National Trust and Savings Bank of Los Angeles, is void as against George Gardner, Trustee in Bankruptcy, to-wit: [27]

- 1 - 1936 Plymouth Sedan, Motor No. P2370259, Serial No. 1161805
- 1 - 1935 Ford Pickup Truck, Motor No. DR89610, Serial No. 18-2159920
- 1 - 1936 Willys Pickup Truck, Motor No. 77-45263, Serial No. 77-46946
- 1 - Air Compressor-Tank #5847, Motor #G.E. KP7056 with Kelley Compressor #95324
- 1 - Lincoln Water Pump grease gun Model 155
- 1 - Lincoln Universal grease gun Model 158
- 1 - Walltype spark plug cleaner
- 20 - Expansion Reamers
- 1 - Engine Analyzer
- 1 - Paint Machine and Mixer
- Tow Chains

- 1 – Tubula Flaring Machine, with Ridge Reamer and Ford Valve lifter (Bar Type)
Air Hoses and Attachments
Water Hoses and Attachments
- 1 – Wheel Puller and pinon puller
- 1 – Tire Tube Piston Tank
- 1 – Auto Parts Boiling on rollers
- 1 – Auto Parts Cleaning Tank
- 1 – Black & Decker Super Service Valve Shop Type K.W. #336210, with Vibro Centric Valve Seat Grinder Type B #A355607 and Stone Pressing Stand Type A #368482
- 1 – Manely Auto Tow Crane and Spout Lite #150-55578
- 1 – Westinghouse Battery Charger #954966B
- 1 – Booster Battery
- 1 – Manely Front End Machine and Attachments
- 1 – Grinder-Baldor Electric Buffer and Grinder, Type X20, #021111
- 1 – Large metal bench
- 1 – Small “ “
- 1 – Metal Cabinet Type Bench
- 1 – Chiskolm Moore Chain Hoist 1 ton
High Boys (oil)
Oil Can Drums
- 1 – complete Welding Outfit
- 1 – Pair Goggles
- 1 – Walker Floor Hdy Jack
Paint Spray Guns #6 Serial, #0681 Devilbliss – Shelbord and Attachments, Hose, Air Regulations cup
- 30 – Brake Reliner Wyman Marathon Electric Motor #023828

1 – Desk

1 – File Cabinets

1 – Chair

1 – Bench Type Vise

Billing Machines and Forms

3 – Sets Automobile Stands

1 – Brake Fluid Machine

1 – Battery Box and Filler

1 – Automobile tow dolly

II.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, is the owner of, and entitled to the possession of all those items of personal property more particularly described in the foregoing paragraph I, free and [28] clear of any right, title, interest, estate, claim or lien on the part of the Citizens Trust and Savings Bank of Los Angeles.

III.

That George Gardner, as Trustee in Bankruptcy of the above entitled bankrupt estates, has a right to have and apply the value of the said personal property free and clear of the purported lien of said chattel mortgage to the payment of the obligation of the bankrupt estates and for and on behalf of all the creditors of said bankrupt estates.

Done in Open Court This 14 Day of May, 1946.

HUGH L. DICKSON

Referee in Bankruptcy. [29]

DOCUMENT NO. 7

PETITION FOR REVIEW

To Hugh L. Dickson, Esquire, Referee in Bankruptcy:

The petition of Citizens National Trust & Savings Bank of Los Angeles, a National Banking Association, respectfully shows:

1. That petitioner is a creditor of the bankrupts;
2. That on May 14, 1946, an order was made by the Referee wherein and whereby it was ordered that a certain chattel mortgage, more particularly referred to in said order, executed by the Bankrupts in favor of petitioner Citizens National Trust & Savings Bank of Los Angeles is void as against George Gardner, Trustee in Bankruptcy. A copy of said Order is hereto annexed, marked Exhibit "A".
3. The said order is erroneous on the following grounds:
 - a. That said order is contrary to law.
 - b. That there is insufficient evidence to justify said order.
 - c. The conclusion of law, namely, that petitioner failed to comply with the Provisions of Section 3440 of the Civil Code of the State of California, made by the Referee as a ground for the said order, was erroneous in that said Section 3440 of the Civil Code of the State of California was inapplicable to the chattel mortgage herein referred to, in view of the circumstances under which said chattel mortgage was given, as disclosed by the evidence and findings of fact.
 - d. That the aforesaid conclusion of law in respect to said Section 3440 of the Civil Code of [30]

the State of California is erroneous in that said section could, under no circumstances be applicable to all of the property covered by said chattel mortgage.

e. That there is insufficient evidence to justify the findings of fact and/or conclusions of law of the Referee upon which the aforesaid Order was made, to the effect that petitioner failed to act promptly or diligently in causing the chattel mortgage to be recorded in the Office of the County Recorder of Los Angeles County or in depositing a certified copy of said chattel mortgage in the Motor Vehicle Department, Sacramento, California.

Wherefore, *petition* prays that said order be reviewed, vacated and set aside.

Dated: May 18th, 1946.

CITIZENS NATIONAL TRUST & SAVINGS
BANK OF LOS ANGELES, a National
Banking Association

By R. A. Britt, Vice President

Petitioner

Fifth and Spring Streets

Los Angeles, California

Attorney for Petitioner:

HENRY MERTON

1204 Loew's State Bldg.

707 South Broadway,

Los Angeles 14, TR 4907

[Verified.] [31]

(Exhibit "A" referred to in above Petition for Review is the same Order as Document No. 6 as set forth above.)

[Endorsed]: Filed Jun. 26, 1946. [32]

In the District Court of the United States
Southern District of California
Central Division

No. 44287-WM In Bankruptcy

In the Matter of

HERBERT G. RELL,

Bankrupt.

ORDER OF JUDGE ON PETITION FOR REVIEW
OF REFEREE'S ORDER OF MAY 14, 1946

At Los Angeles in said district on the 30th day of September, 1946,

Upon the petition for review of Citizens National Trust and Savings Bank of Los Angeles, filed May 20, 1946, and upon the certificate of Referee Hugh L. Dickson, filed herein June 26, 1946, and upon all proceedings had before the Referee as appears from the certificate, and upon hearing the petitioner, appearing by Henry Merton, Esquire, and the Trustee in Bankruptcy, appearing by Frank M. Chichester, Esquire,

It Is Ordered that the Order of the Referee entered on May 14, 1946, adjudging to be void as against the Trustee in Bankruptcy a certain chattel mortgage in favor of petitioner, be and said order herein sought to be reviewed is hereby confirmed.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to

(1) Hugh L. Dickson, Esquire, the Referee;

(2) Henry Merton, Esquire, Attorney for the petitioner; and [33]

(3) Frank M. Chichester, Esquire, Attorney for the Trustee.

October 8, 1946.

WM. C. MATHES

United States District Judge

Judgment entered Oct. 8, 1946. Docketed Oct. 8, 1946. Book 9, page 556. Edmund L. Smith, Clerk, by Louis J. Somers, Deputy.

[Endorsed]: Filed Oct. 8, 1946. [34]

[Title of District Court and Cause.]

No. 44287-WM

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS

Notice is hereby given that Citizens National Trust & Savings Bank of Los Angeles, a national banking association, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled court, the Honorable William C. Mathis, Judge Presiding, confirming an order of the referee entered on May 14, 1946, adjudging to be void as against the trustee in bankruptcy a certain chattel mortgage in favor of said Citizens National Trust & Savings Bank of Los Angeles. Said order of the Court, confirming said

referee's order, was filed and entered in the above proceedings on or about October 8, 1946.

Dated: October 28, 1946.

HENRY MERTON

Attorney for Appellant Citizens National Trust
& Savings Bank of Los Angeles

1204 Loew's State Building
Los Angeles 14, California

[Endorsed]: Filed & mld. copy to F. M. Chichester,
Atty. for Trustee, Oct. 28, 1946. [35]

[Title of District Court and Cause.]

No. 44287-WM

STATEMENT OF POINTS

The Appellant states that the points upon which it intends to rely in the appeal in this proceeding are as follows:

1. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the chattel mortgage.

2. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the two automobiles, to wit, a Willys pick-up truck, 1936 model, and a Plymouth Sedan, 1936 model, included in said chattel mortgage, the regis-

tration of which and the possession of which were in Herbert G. Rell and Lovina Rell, his wife, prior to their purchase of the garage business and equipment from Andrew H. Wilson, and which automobiles were not purchased from said Andrew H. Wilson and were not at any time part of the equipment of his garage business.

3. The evidence, presented entirely by a written stipulation of facts, was insufficient to support the order of the [36] Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded in the Office of the County Recorder of Los Angeles County and/or causing a certified copy or certified copies to be deposited with the Department of Motor Vehicles in Sacramento, California. The evidence failed entirely to show any such failure on the part of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded and causing a certified copy or certified copies thereof to be deposited with the Motor Vehicle Department, Sacramento, California.

Dated: October 31, 1946.

HENRY MERTON

Attorney for Appellant [37]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 1, 1946. [38]

[Title of District Court and Cause.]

No. 44287-WM Bkcy.

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 43 inclusive contain full, true and correct copies of Debtor's Petition; Orders of Adjudication and of General Reference; Referee's Certificate on Review and Documents Nos. 1 to 7, inclusive, attached thereto; Order of Judge on Petition for Review of Referee's Order of May 14, 1946; Notice of Appeal; Statement of Points; Designation of Portions of Record to be Contained in Record on Appeal; Supplementary Designation of Portions of Record to be Contained in Record on Appeal; and Affidavit of Service by Mail which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$11.75 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21 day of November, A. D. 1946.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Endorsed]: No. 11485. United States Circuit Court of Appeals for the Ninth Circuit. Citizens National Trust & Savings Bank of Los Angeles, Appellant, vs. George Gardner, Trustee in Bankruptcy of the Estate of Herbert G. Rell, Bankrupt, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed November 22, 1946.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the District Court of the United States
Southern District of California
Central Division

No. 44288-WM In Bankruptcy

In the Matter of

LOVINA RELL,

Bankrupt.

ORDER OF JUDGE ON PETITION FOR REVIEW
OF REFEREE'S ORDER OF MAY 14, 1946

At Los Angeles in said district on the 30th day of
September, 1946,

Upon the petition for review of Citizens National
Trust and Savings Bank of Los Angeles, filed May 20,
1946, and upon the certificate of Referee Hugh L. Dick-
son, filed herein June 26, 1946, and upon all proceedings
had before the Referee as appears from the certificate,
and upon hearing the petitioner, appearing by Henry
Merton, Esquire, and the Trustee in Bankruptcy, appear-
ing by Frank M. Chichester, Esquire,

It Is Ordered that the order of the Referee entered on
May 14, 1946, adjudging to be void as against the Trus-
tee in Bankruptcy a certain chattel mortgage in favor of
petitioner, be and said order herein sought to be reviewed
is hereby confirmed.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to

- (1) Hugh L. Dickson, Esquire, the Referee;
- (2) Henry Merton, Esquire, Attorney for the petitioner; and [33]
- (3) Frank M. Chichester, Esquire, Attorney for the Trustee.

October 8, 1946.

WM. C. MATHES

United States District Judge

Judgment entered Oct. 8, 1946. Docketed Oct. 8, 1946. Book 9, page 558. Edmund L. Smith, Clerk, by Louis J. Somers, Deputy.

[Endorsed]: Filed Oct. 8, 1946. [34]

[Title of District Court and Cause.]

No. 44288-WM

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice is hereby given that Citizens National Trust & Savings Bank of Los Angeles, a national banking association, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled court, the Honorable William C. Mathis, Judge Presiding, confirming an order of the referee entered on May 14, 1946, adjudging to be void as against the trustee in bankruptcy a certain chattel mortgage in favor of said Citizens National Trust & Savings Bank

of Los Angeles. Said order of the Court, confirming said referee's order, was filed and entered in the above proceedings on or about October 8, 1946.

Dated: October 28, 1946.

HENRY MERTON

Attorney for Appellant Citizens National Trust
& Savings Bank of Los Angeles

1204 Loew's State Building
Los Angeles 14, California

[Endorsed]: Filed & mld. copy to F. M. Chichester,
Atty. for Trustee, Oct. 28, 1936. [35]

[Title of District Court and Cause.]

No. 44288-WM

STATEMENT OF POINTS

The Appellant states that the points upon which it intends to rely in the appeal in this proceeding are as follows:

1. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the chattel mortgage.
2. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the two automobiles, to wit, a Willys pick-up truck, 1936 model, and a Plymouth Sedan, 1936 model, included in said chattel mortgage, the registration of which and the possession of which were in Herbert G. Rell and Lovina Rell, his wife, prior to their

purchase of the garage business and equipment from Andrew H. Wilson, and which automobiles were not purchased from said Andrew H. Wilson and were not at any time part of the equipment of his garage business.

3. The evidence, presented entirely by a written stipulation [36] of facts, was insufficient to support the order of the Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded in the office of the County Recorder of Los Angeles County and/or causing a certified copy or certified copies to be deposited with the Department of Motor Vehicles in Sacramento, California. The evidence failed entirely to show any such failure on the part of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded and causing a certified copy or certified copies thereof to be deposited with the Motor Vehicle Department, Sacramento, California.

Dated: October 31, 1946.

HENRY MERTON

Attorney for Appellant [37]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 1, 1946. [38]

[Title of District Court and Cause.]

No. 44288-WM-Bkcy.

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 43 inclusive contain full, true and correct copies of Debtor's Petition; Orders of Adjudication and of General Reference; Referee's Certificate on Review and Documents Nos. 1 to 7, inclusive, attached thereto; Order of Judge on Petition for Review of Referee's Order of May 14, 1946; Notice of Appeal; Statement of Points; Designation of Portions of Record to be Contained in Record on Appeal; Supplementary Designation of Portions of Record to be Contained in Record of Appeal; and Affidavit of Service by Mail which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$11.75 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21 day of November, A. D. 1946.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke
Chief Deputy Clerk

[Endorsed]: No. 11486. United States Circuit Court of Appeals for the Ninth Circuit. Citizens National Trust & Savings Bank of Los Angeles, Appellant, vs. George Gardner, Trustee in Bankruptcy of the Estate of Lovina Rell, Bankrupt, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed November 22, 1946.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11485

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Association,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of
HERBERT G. RELL, Bankrupt, Appellee.

STATEMENT OF POINTS

The appellant, Citizens National Trust & Savings Bank of Los Angeles, a National Banking Association, states that the points upon which it intends to rely on the appeal in this action are as follows:

1. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the chattel mortgage.

2. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the two automobiles, to wit, a Willys pick-up truck, 1936 model, and a Plymouth Sedan, 1936 model, included in said chattel mortgage, the ownership of which were acquired by Herbert G. Rell and Lovina Rell from other parties, and which were at no time part of the garage business and equipment purchased from Andrew H. Wilson.

3. The evidence, presented entirely by a written stipulation of facts, was insufficient to support the order of

the Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded in the Office of the County Recorder of Los Angeles County.

4. The evidence was insufficient to support the order of the Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing a certified copy or certified copies of said chattel mortgage to be deposited with the Department of Motor Vehicles in Sacramento, California.

5. The evidence failed entirely to show any failure on the part of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded with the County Recorder of Los Angeles County and/or causing a certified copy or certified copies thereof to be deposited with the Motor Vehicle Department, Sacramento, California.

Dated: November 19, 1946.

HENRY MERTON

Attorney for Appellant

Henry Merton

1204 Loew's State Bldg.

Los Angeles 14, California

[Endorsed]: Filed Nov. 22, 1946. Paul P. O'Brien,
Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11486

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Association,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of
LOVINA RELL, Bankrupt,

Appellee.

STATEMENT OF POINTS

The appellant, Citizens National Trust & Savings Bank of Los Angeles, a National Banking Association, states that the points upon which it intends to rely on the appeal in this action are as follows:

1. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the chattel mortgage.

2. The Court erred in determining that the provisions of Section 3440 of the Civil Code of the State of California were applicable to the two automobiles, to wit, a Willys pick-up truck, 1936 model, and a Plymouth Sedan, 1936 model, included in said chattel mortgage, the ownership of which were acquired by Herbert G. Rell and Lovina Rell from other parties, and which were at no time part of the garage business and equipment purchased from Andrew H. Wilson.

3. The evidence, presented entirely by a written stipulation of facts, was insufficient to support the order of the Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded in the Office of the County Recorder of Los Angeles County.

4. The evidence was insufficient to support the order of the Court adjudging the chattel mortgage void as against the trustee in bankruptcy on the ground of failure of Appellant to act promptly or diligently in causing a certified copy or certified copies of said chattel mortgage to be deposited with the Department of Motor Vehicles in Sacramento, California.

5. The evidence failed entirely to show any failure on the part of Appellant to act promptly or diligently in causing said chattel mortgage to be recorded with the County Recorder of Los Angeles County and/or causing a certified copy or certified copies thereof to be deposited with the Motor Vehicle Department, Sacramento, California.

Dated: November 19, 1946.

HENRY MERTON

Attorney for Appellant

Henry Merton
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Los Angeles 14, California

[Endorsed]: Filed Nov. 22, 1946. Paul P. O'Brien,
Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11485

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Asso-
ciation,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of
HERBERT G. RELL, Bankrupt,

Appellee.

No. 11486

CITIZENS NATIONAL TRUST & SAVINGS BANK
OF LOS ANGELES, a National Banking Asso-
ciation,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of
LOVINA RELL, Bankrupt,

Appellee.

STIPULATION AND ORDER FOR
CONSOLIDATION OF ACTIONS

Whereas, the appeals pending before the above en-
titled Court in the matter of the above entitled proceed-
ings involve the same subject matter, questions and facts,

It Is Hereby Stipulated between Appellant and Appellee
in both of said causes, subject to the approval and order
of the Court, that both of said causes be consolidated for
hearing and determination, and that in this connection the
transcript of the records on appeal for both causes may
be printed and incorporated in a single printed volume,

and the briefs of the parties may be prepared and filed to include and be applicable to both of said causes.

Dated: November 19, 1946.

HENRY MERTON

Attorney for Appellant in both of the Above
Causes

FRANK M. CHICHESTER

Attorney for Appellee in Both of the Above
Causes

Henry Merton

1204 Loew's State Building

Los Angeles 14, California

Frank M. Chichester

617 South Olive Street

Los Angeles 14, California

ORDER OF CONSOLIDATION

Upon reading the above stipulation of counsel, and proper cause appearing,

It Is Hereby Ordered that the above entitled causes be consolidated for hearing and determination, and that in this connection the transcript of the records on appeal for both causes may be printed and incorporated in a single printed volume, and the briefs of the parties be prepared and filed to include and be applicable to both of said causes.

Dated: Nov. 23, 1946.

FRANCIS A. GARRECHT

Senior United States Circuit Judge

[Endorsed]: Filed Nov. 22, 1946. Paul P. O'Brien,
Clerk.

Nos. 11485-11486

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS
ANGELES, a National Banking Association,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of HERBERT
G. RELL, Bankrupt,

Appellee,

CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS
ANGELES, a National Banking Association,

Appellant,

vs.

GEORGE GARDNER, as Trustee of the Estate of LOVINA
RELL, Bankrupt,

Appellee.

APPELLANT'S OPENING BRIEF.

HENRY MERTON,
1204 Loew's State Building, Los Angeles 14,
Attorney for Appellant.

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and the briefs of the parties may be prepared and filed to include and be applicable to both of said causes.

Dated: November 19, 1946.

HENRY MERTON

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Causes

FRANK M. CHICHESTER

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ORDER OF CONSOLIDATION

Upon reading the above stipulation of counsel, and proper cause appearing,

It Is Hereby Ordered that the above entitled causes be consolidated for hearing and determination, and that in this connection the transcript of the records on appeal for both causes may be printed and incorporated in a single printed volume, and the briefs of the parties be prepared and filed to include and be applicable to both of said causes.

Dated: Nov. 23, 1946.

FRANCIS A. GARRECHT

Senior United States Circuit Judge

[Endorsed]: Filed Nov. 22, 1946. Paul P. O'Brien,
Clerk.